

construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

- (i) Likelihood of flooding.
- (ii) Probability of flood damage.
- (iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA or its successor agency under Public Law 103-354 representatives will evaluate the proposal and record the decision in the loan docket in accordance with subpart G of part 1940 of this chapter.

(b) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA or its successor agency under Public Law 103-354 that will be performed by a contract or sub-contract of more than \$10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 of this chapter apply.

(d) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable environmental requirements. Refer to FmHA Instruction 2000-LL (available in any FmHA or its successor agency under Public Law 103-354 office) for assistance in implementation.

(e) *Equal Credit Opportunity Act.* In accordance with title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA or its successor agency under Public Law 103-354 will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use and restrictions for water development. State supplements will be issued to provide guidelines which:

- (i) State all requirements to be met, including the acquisition of water rights.
- (ii) Define areas where development of ground water for irrigation is not recommended.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

[53 FR 35706, Sept. 15, 1988, as amended at 57 FR 18679, Apr. 30, 1992; 58 FR 15074, Mar. 19, 1993]

#### § 1943.74 Special requirements.

(a) *Land development.* When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) program.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA or its successor agency under Public Law 103-354.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in subpart A of part 1806 of this chapter (FmHA Instruction 426.1) on real estate taken as primary security, as defined in §1943.54 of this subpart. Property insurance will not be required when real estate is taken as additional security, as defined in §1943.54 of this subpart.

(2) See §1943.73(a) of this subpart for information about flood and mudslide hazard areas.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Liens junior to the FmHA or its successor agency under Public Law 103-354 lien.* A loan will not be approved if a lien junior to the FmHA or its successor agency under Public Law 103-354 lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(g) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 26681, May 5, 1993]

#### § 1943.75 Options, planning, and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real property. Form FmHA or its successor agency under Public Law 103-354 440-34, "Option to Purchase Real Property," may be used. Other forms may be used if acceptable to all parties concerned and to FmHA or its successor agency under Public Law 103-354. When an FmHA or its successor agency under Public Law 103-354 form is not used, a provision should be included which makes the option contingent upon FmHA or its successor agency under Public Law 103-354 making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in subpart B of part 1924 of this chapter.

(c) *Appraisals.* (1) Except as provided in paragraph (c)(2) of this section, real estate appraisals will be completed on forms in accordance with §761.7 of this title, and in the case of an appraisal of residential real estate, the appropriate Agency form (available in each Agency